

THIS DISPOSITION IS  
NOT CITABLE AS PRECEDENT OF THE TTAB      MAY 26,99  
U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re MovieFone, Inc.

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Serial No. 75/024,380

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Amy J. Benjamin and Karin Segall of Darby & Darby P.C. for  
MovieFone, Inc.

Erica D. B. Glembocki, Trademark Examining Attorney, Law  
Office 102 (Thomas Shaw, Managing Attorney).

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Before Simms, Quinn and Hairston, Administrative Trademark  
Judges.

Opinion by Hairston, Administrative Trademark Judge:

MovieFone, Inc. has filed an application to register  
the mark AMERICA'S MOVIE GUIDE for the following services:

Promoting the services and products of the  
movie industry by preparing and placing  
prerecorded telephone advertisements for  
others; transmission of data, namely movie  
listings and other advertisements for others  
via telephone and global computer network;  
providing movie directory information and  
arranging for the purchase of movie tickets

via telephone and global computer network;  
[and] telephone information services,  
featuring movie listings.<sup>1</sup>

Registration has been refused under Section 2(e)(2) of the Trademark Act, 15 U.S.C. §1052(e)(2), on the ground that the mark AMERICA'S MOVIE GUIDE is primarily geographically descriptive of the identified services.

When the refusal was made final, applicant appealed. The case has been fully briefed,<sup>2</sup> but no oral hearing was requested.

It is applicant's position that the mark AMERICA'S MOVIE GUIDE is not primarily geographically descriptive of

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<sup>1</sup> Application Serial No. 75/024,380 filed November 27, 1995; asserting a bona fide intention to use the mark in commerce.

<sup>2</sup> We note that, in her appeal brief, the Examining Attorney has objected to a list of third-party registrations included in applicant's response to an Office Action and another list of third-party registrations applicant included in its appeal brief. While the proper procedure to make third-party registrations of record is to submit copies of the actual registrations or the electronic equivalent thereof, i.e., printouts of the registrations taken from the Office's own computerized data base, inasmuch as the Examining Attorney failed to make this objection earlier, and instead discussed the registrations, we consider any objection to the first list to have been waived. However, the Examining Attorney's objection to the list of third-party registrations included in applicant's appeal brief is sustained. Trademark Rule 2.142(d) provides that the record in an application should be complete prior to the filing of the appeal and that the Board will ordinarily not consider evidence submitted after an appeal is filed. Also, as indicated above, a mere list is not the proper way to make such registrations of record. Finally, applicant's request to remand the application to make copies of the registrations of record is denied. See Rule 2.142(d) and TMBP 1207.02.

its services. Applicant maintains that the term AMERICA'S, as used in its mark, is laudatory and that MOVIE GUIDE is at most suggestive of its services.

In order for registration to be properly refused under Section 2(e)(2) of the Act, the Office must establish that the mark sought to be registered is the name of a place generally known to the public and that the public would make a services/place association; i.e., believe that the services for which the mark is sought to be registered originate in that place. See *In re California Pizza Kitchen, Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1989) and cases cited therein. Moreover, if a geographic term in a mark is neither remote or obscure and the geographic significance is the primary connotation of the term, and where the goods or services actually originate from the geographic place designated in the mark, a public association of the goods or services with the place may ordinarily be presumed. See *California Pizza Kitchen, supra*, and *In re Handler Fenton Westerns*, 214 USPQ 848 (TTAB 1992). In this case, the dictionary definitions submitted by the Examining Attorney show that AMERICA indicates the United States of America. See Webster's New Geographical Dictionary and Webster's II New Riverside University Dictionary. Also, we agree with the Examining Attorney that MOVIE GUIDE is highly

descriptive, if not generic, of applicant's services. The fact that applicant transmits movie listings and provides movie directory information via telephone and global computer network, rather than in a printed publication, does not render the term MOVIE GUIDE any less descriptive. Thus, the primary significance of AMERICA'S MOVIE GUIDE is geographic. The addition of a highly descriptive or generic term to a geographical term does not avoid the refusal of primary geographic descriptiveness. See *In re U.S. Cargo Inc.*, 49 USPQ2d 1702 (TTAB 1998); *BankAmerica Corp.*, 231 USPQ 873 (TTAB 1986); and *In re Cambridge Digital Systems*, 1 USPQ2d 1659 (TTAB 1986). Further, inasmuch as it appears that applicant's services will come from the United States, applicant being located in New York, a public association of the services with the place named in the mark is presumed.

We should add that this case is readily distinguishable from *In re Jim Crockett Promotions Inc.*, 5 USPQ2d 1455 (TTAB 1987) [The GREAT AMERICAN BASH is not primarily geographically descriptive of promoting professional wrestling matches]. In *Crockett*, the term GREAT AMERICAN was found to suggest some desirable quality or excellence and BASH was not generic or highly descriptive of services involving wrestling matches.

Finally, as to the third-party registrations relied on by applicant, we note that each case must be decided on its own merits based on the evidence of record. We obviously are not privy to the records involved in the registered marks and, in any event, the allowance of those registrations does not control the result in this case, which involves a different mark.

**Decision:** The refusal to register is affirmed.

R. L. Simms

T. J. Quinn

P. T. Hairston  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board

**Ser No.** 75/024,380